



Billing Code 4310–55

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–MB–2013–N138]

[FXMB12320100000P2–123–FF01M01000]

Golden Eagles; Programmatic Take Permit Application; Draft Environmental Assessment; Shiloh IV Wind Project, Solano County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability of a draft Environmental Assessment (DEA) under the National Environmental Policy Act (NEPA) for the issuance of a take permit for golden eagles pursuant to the Bald and Golden Eagle Protection Act (Eagle Act), in association with the operation of the Shiloh IV Wind Project in Solano County, California. The DEA was prepared in response to an application from Shiloh IV Wind Project, LLC (applicant), an affiliate of EDF Renewable Development, Incorporated, for a 5-year programmatic take permit for golden eagles (*Aquila chrysaetos*) under the Eagle Act. The applicant would implement a conservation program to avoid, minimize, and compensate for the project's impacts to eagles, as described in the applicant's Eagle Conservation Plan (ECP). We invite public comment on the DEA, which evaluates alternatives for this permit.

DATES: To ensure consideration, written comments must be received on or before

[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL

REGISTER].

ADDRESSES: *Obtaining Documents:* You may download copies of the DEA on the Internet at: <http://www.fws.gov/cno/conservation/migratorybirds.html>. Alternatively, you may use one of the methods below to request a CD-ROM of the document.

Submitting Comments: You may submit comments or requests for copies or more information by one of the following methods.

- *Email:* ShilohIV_comments@fws.gov.
- *U.S. Mail:* Heather Beeler, Migratory Bird Program, U.S. Fish and Wildlife Service, Pacific Southwest Regional Office, 2800 Cottage Way, W-2605, Sacramento, CA 95825.
- *Fax:* Heather Beeler, Migratory Bird Program, 916-414-6486, Attn: Shiloh IV Wind Project DEA Comments.

FOR FURTHER INFORMATION CONTACT: Heather Beeler, Migratory Bird Program, at the address shown above or at (916) 414-6651 (telephone).

SUPPLEMENTARY INFORMATION

Introduction

The U.S. Fish and Wildlife Service is considering an application under the Bald and Golden Eagle Protection Act (16 U.S.C. 668a-d; Eagle Act) for a programmatic golden eagle (*Aquila chrysaetos*) take permit from the Shiloh IV Wind Project LLC, (applicant) an affiliate of EDF Renewable Development, Incorporated, for a 5-year

programmatic take permit for golden eagles. The Shiloh IV Wind Project is an existing, operational wind facility in the Montezuma Hills Wind Resource Area (WRA) within Solano County, California. The application includes an Eagle Conservation Plan (ECP) as the foundation of the applicant's permit application, as well as a Bird and Bat Conservation Strategy (BBCS). The ECP and BBCS describe actions taken and proposed future actions to avoid, minimize, and mitigate adverse effects on eagles, birds, and bats.

We have prepared this DEA to evaluate the impacts of several alternatives associated with this permit application for compliance with our Eagle Act permitting regulations in the Code of Federal Regulations (CFR) at 50 CFR 22.26, as well as impacts of implementation of the supporting ECP, which is included as an appendix to the DEA.

Background

The Eagle Act allows us to authorize bald eagle and golden eagle programmatic take (take that is recurring, is not caused solely by indirect effects, and that occurs over the long term or in a location or locations that cannot be specifically identified). Such take must be incidental to actions that are otherwise lawful. The Eagle Act's implementing regulations define "take" as to "pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, destroy, molest, or disturb" individuals, their nests and eggs (50 CFR 22.3); and "disturb" is further defined as "to agitate or bother a bald or golden eagle to a degree that causes ... (1) injury to an eagle, ... (2) a decrease in its productivity, ... or (3) nest abandonment" (50 CFR 22.3). The Shiloh IV Wind Project will result in

recurring eagle mortalities over the life of the project, so the appropriate type of take permit is the programmatic permit under 50 CFR 22.26.

We may consider issuance of programmatic eagle take permits if: (1) the incidental take is necessary to protect legitimate interests; (2) the take is compatible with the preservation standard of the Eagle Act—providing for stable or increasing breeding populations; (3) the take has been avoided and minimized to the degree achievable through implementation of Advanced Compensation Practices (ACPs), and the remaining take is unavoidable; and (4) compensatory mitigation will be provided for any remaining take. The Service must determine that the direct and indirect effects of the take and required mitigation, together with the cumulative effects of other permitted take and additional factors affecting eagle populations, are compatible with the preservation of bald eagles and golden eagles.

Applicant's Proposal

The permit applicant, Shiloh IV, is operating a 100-megawatt (MW) commercial wind-energy facility, consisting of 50 wind turbines, each with a 2-MW generation capacity, in the Montezuma Hills WRA of Solano County, California. This project was constructed adjacent to other existing wind-energy-producing facilities. The recently constructed (December 2012) Shiloh IV Wind Project was a repowering and infill project entailing the decommissioning and removal of approximately 230 Kennetech wind turbines originally constructed in the late 1980s.

The applicant submitted an ECP on August 3, 2012 that was developed following recommendations provided by the Service and consistent with our January 2011 Draft

Eagle Conservation Plan Guidance

(http://www.fws.gov/windenergy/docs/ECP_draft_guidance_2_10_final_clean_omb.pdf).

As recommended in the Service's draft guidance, the applicant's plan outlines avoidance and minimization measures, contains a risk assessment, includes experimental advanced conservation practices, and adaptive management. The applicant submitted the ECP as part of the permit application, and if we issue the permit following the National Environmental Policy Act (NEPA) process, then the conservation commitments would become conditions of the permit.

The Service independently evaluated the risk of eagle fatalities from project operations and compared that risk to the conservation measures to which the applicant has committed. This is an essential step in the Service's evaluation of an application for a permit for programmatic take of eagles because issuing criteria require permitted take to comply with the Eagle Acts's preservation standard. The Service has interpreted this standard to require maintenance of stable or increasing breeding populations of eagles (74 FR 46836; September 11, 2009). We evaluate the risk and offsetting conservation measures, and the implications for direct, indirect, and cumulative effects under four alternatives in the DEA.

Next Steps

The public process for the proposed Federal permit action will be completed after the public comment period, at which time we will evaluate the permit application and comments submitted thereupon to determine whether the application meets the permitting requirements under the Eagle Act, applicable regulations, and NEPA requirements. Upon

completion of that evaluation, we will select our course of action. We will make the final permit decision no sooner than 30 days after the close of the public comment period.

Public Comments

We invite public comment on the proposed DEA. If you wish, you may submit comments by any one of the methods discussed above under ADDRESSES.

Public Availability of Comments

We will consider public comments on the DEA when making the final determination on NEPA compliance and permit issuance. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under Section 668a of the Eagle Act (16 U.S.C. 668-668c) and NEPA regulations (40 CFR 1506.6).

Dated: September 24, 2013.

**Alexandra Pitts,
Deputy Regional Director, Pacific Southwest,
Sacramento, California**

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